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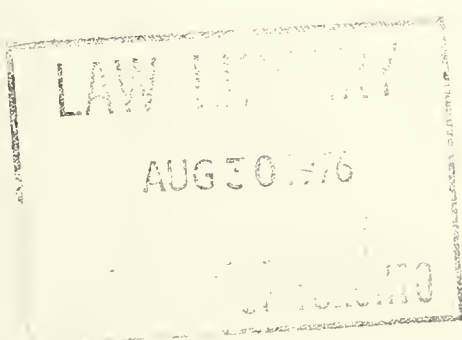
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FAMILY LAW

(Professor Baxter)

1976





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FAMILY LAW COURSE

(Professor Baxter)

The following is the syllabus for this course with tentative dates. The material indicated under the dates and the relevant portions of at least one text should be studied in advance of class meetings. Students will be given an option of either two papers or a final examination.

- 8 and 9 Sep. Introduction. Nature of the Course, General characteristics and background of Family Law. Graveson and Crane, ed., Century of Family Law, chaps. 1, 3 and 11. Baxter, article "Family Law" in Encyclopaedia Britannica 15th ed., Vol. 7, pp. 166-173. Boalt, article "Family and Marriage" in Encyclopaedia Britannica 15th ed., Vol. 7, pp. 155-166.

Part 1 Basic Concepts and Relations

- 14 and 15 Sep. Marriage. Its general legal nature: monogamy and polygamy.
- 16 and 21 Sep. Capacity to marry. Reality of consent.
- 22 Sep. Ceremony of marriage. Modern applications of the "common law" marriage.
- 23, 28 and 29 Sep. Divorce. Grounds. Ancillary remedies. Divorce Act, 1968. Consideration of recent U.K. and Swedish legislation.
- 30 Sep. Legitimacy. Rules for ascertainment. The Legitimacy Act, R.S.O. 1970, ch. 242.
- 5 Oct. Custody of children. Interpretation of the "best interests of the child".

Part II Courts and Jurisdiction

- 6 Oct. Historical background. Ecclesiastical courts.

- 7 Oct. Current jurisdiction of the courts.
 (a) Divorce. Divorce Act, 1968.
 (b) Alimony.
 (c) The Deserted Wives' and Children's Maintenance Act, R.S.O. 1970, ch. 128
 (d) The Infants Act, R.S.O. 1970, ch. 222
- 12 and 13 Oct. Ontario proposals for reform.
 Ontario Law Reform Commission, Report on Family Law, Part v, Family Courts.
 Law Reform Commission of Canada, Working Paper (The Family Court).
- 14 and 19 Oct. Ancillary services in family courts.
 Discussion with outside participants.
- Part III Economic Problems
 (a) Marital Property
- 20 Oct. Historical background.
 The Married Women's Property Act, R.S.O. 1970, ch. 262.
- 21, 26 and 27 Oct. Marital property
 Current state of the law in the Common Law Provinces of Canada and in England.
- 28 Oct. Community property
 Systems of Community Property
 Community property in the U.S.
 Baxter, Marital Property
 (American Family Law Library) (1973), chap. 6.
- 2 Nov. Choice of matrimonial regime.
 Papers on Quebec and France.
- 3 Nov. "Deferred" systems
 Systems involving "deferred community" and division of surplus.
 Papers on Sweden and West Germany.
- 4 Nov. Soviet Union and Eastern Europe, People's Republic of China.
 Papers on U.S.S.R., and People's Republic of China.

9, 10 and 11 Nov. Ontario proposals for reform

Ontario Law Reform Commission, Report on Family Law, Part IV, Family Property Law.

Family Law Study for Ontario Law Reform Commission, Vol. 3 (revised recommendations).

(b) Support Obligations

16 and 17 Nov. Current legislation and causes of action.

Divorce Act, 1968. Alimony actions.

The Deserted Wives' and Children's Maintenance Act, R.S.O. 1970, ch. 128.

The Infants Act, R.S.O. 1970 ch. 222.

The Reciprocal Enforcement of Maintenance Orders Act, R.S.O. 1970, ch. 403

18 and 23 Nov. Proposals for reform

Ontario Law Reform Commission, Report on Family Law, Part VI

Family Law Study for Ontario Law Reform Commission, Vol. 12, ch. 9.

Part IV Conflict of Laws

24 Nov. Domicile

Nature of the concept in the Common Law.

25 and 30 Nov.; 1 Dec. Recognition of Foreign Divorces

Canadian law and the Divorce Act. Recent English legislation based on a Hague^u Convention.

2 and 7 Dec. Validity of Marriage

"Double domicile" rule and its critics. Overlap of marriage validity rules and recognition of divorce rules in Schwebel v Ungar [1965] SCR 148, 48 D.L.R. (2d) 644.

8 and 9 Dec. Property Marital property in private international law.

FAMILY LAW

(Professor Baxter)

General Reading Suggestions

Graveson and Crane, ed., Century of Family Law.

Mendes da Costa (Editor), Studies in Canadian Family Law

Rheinstein, Marriage Stability, Divorce, and the Law (1972).

Power on Divorce (ed. Payne).

Family Law Study (for the Ontario Law Reform Commission)

Reports on Family Law: Ontario Law Reform Commission.

Kay, Making Marriage and Divorce Safe for Women (1972) 60 Cal.

L. Rev., 1683.

Baxter, Law and Domestic Relations, (1973) 51 Can. Bar Rev.,

137, and Family Law Reform in Ontario, (1975) 25 U. of T.L.J.,
236.

Bromley, Family Law.

Cretney, Principles of Family Law.

Students can also consult generally the Reports of Family Law, which is a special series of reports (with index) dealing with recent Canadian family law cases.

Marriage

Hyde (1866), L.R. 1 P. & D., 130.

Pugh [1951] P. 482, [1951] 2 All E.R. 680.

Corbett [1970] 2 All E.R. 33, [1971] P. 83.

Buckland [1968] P. 296, [1967] 2 All E.R. 300.

Clause [1956] O.W.N. 449.

Alspector [1957] O.R. 14, 454.

Pascuzzi [1955] O.W.N. 853.

Re Park Estate [1954] P. 112, 127.

Silver [1955] 2 All E.R., 614

Cheni [1965] P. 85.

Ali [1968] P. 564.

Baindail [1946] P. 122, [1946] 1 All E.R. 342.

Nachimson [1930] P. 217, [1930] All E.R. 141.

Keyes, The Validity of the Common Law Marriage in Ontario, (1958),

1 Osgoode Hall L.J. 58.

Stein, Common Law Marriage (1969) 9 J. of Family Law, 271.

Divorce

Challoner (1974) 12 R.F.L. 311.

Norman (1974) 12 R.F.L. 252.

Santos [1972] Fam. 247.

Retzer (1975) 19 R.F.L. 365.

Rowland [1969] 2 O.R. 615.

Armel (1975) 17 R.F.L. 71.

Julian (1972) 116 S.J. 753.

Parker [1972] Fam. 116.

Talsky (1976) 21 R.F.L., 27 (see also MacDonald (1976) 21 R.F.L., 42).

Jones v. National Trust (1975) 19 R.F.L. 289.

Law Commission (England), Reform of the Ground of Divorce: the
Field of Choice, Cmd. 3123.

Basic Legal Concepts (e.g. Desertion, Cruelty) and Support Remedies:

Pulford v. Pulford [1923] P. 18.

Crowther v. Crowther [1951] A.C. 723.

Russell [1897] A.C. 395.

Yewchyn [1951] O.W.N. 101.

Gollins v. Gollins [1964] A.C. 644.

Williams v. Williams [1964] A.C. 698.

Ash [1972] 1 All E.R., 582.

Mathers (1972) 7 R.F.L. (Ont.) 62.

Marital Property

Hoddinott [1949] 2 K.B. 406.

Minaker [1949] S.C.R. 397.

Thompson [1961] S.C.R. 3, 26 D.L.R. (2d), 1.

Trueman (1971) 2 W.W.R. 688.

Pettitt [1970] A.C. 777

Gissing [1970] 2 All E.R. 780, [1971] A.C. 886.

Wachtel [1973] 2 W.L.R. 366.

Jones v Maynard [1951] Ch. 572

Re Bishop, [1965] Ch. 450

Maysels (1974) 14 R.F.L. 286.

Murdoch (1973) 13 R.F.L. 185

Madisso (1976) 21 R.F.L. 51.

Ahone (Smith) v. Ahone (1976) 20 R.F.L. 290.

Lindenblatt (1975) 18 R.F.L. 247.

Marital Property: Comparative Aspects

Papers issued: General Introduction; Quebec; Canada (Homestead);
France; West Germany; Sweden; U.S.S.R.; People's
Republic of China.

Baxter, Marital Property (American Family Law Library) (1973,
Chap. 6. (U.S.).

Law Commission, Published Working Papers Nos. 42 and 52 (England)
Matrimonial Causes Act, 1973 ss. 23-25 (England).

Deserted Wife and the Matrimonial Home

Bendall v. McWhirter [1952] 2 Q.B. 466.

Jollow v. Jollow [1954] O.R. 895.

Donoghue (1973) 11 R.F.L. 305.

Stanley (1973) 11 R.F.L. 223.

Re Demaiter and Link (1974) 12 R.F.L. 314.

Jones v. Jones [1971] 1 W.L.R. 396.

Tarr v. Tarr [1971] 1 All E.R. 817.

National Provincial Bank v. Ainsworth [1965] A.C. 1175.

Matrimonial Homes Act, 1967 (U.K.)

Legitimacy

The Legitimacy Act, R.S.O. 1970, Ch. 242.

Poulett Peerage Case [1903] A.C. 395.

Gardner v. Gardner (1877) 2 App. Cas. 723.

Preston-Jones v. Preston-Jones [1951] A.C. 391.

Aylesford Peerage Case (1885) 11 App. Cas. 1.

Krause, Illegitimacy, Law and Social Policy (1971).

Cruickshank, Forgotten Fathers, (1972) 7 R.F.L. 1.

Conflict of Laws

Le Mesurier [1895] A.C. 517.

Armitage v. A.G. [1906] P. 135.

Trovers v. Holley [1953] 2 All E.R. 794, [1953] P. 246.

Robinson-Scott [1957] 3 All E.R. 473, [1958] P. 71.

Indyka [1967] 2 All E.R. 689, [1967] 3 W.L.R. 510, [1969] 1 A.C. 33.

North, Recognition of Extra-Judicial Divorces (1975) 91 L.Q.R., 36.

Preston [1963] 2 All E.R. 405, [1963] P. 411.

Starkowski v. A.G. [1954] A.C. 155.

Schwebel v Ungar (1964), 48 D.L.R. (2d) 644.

Ontario Law Reform Commission, Report on Family Law, Part 4, Family
Property Law, chap. 10.

Baxter, Family Law Reform in Ontario (1975) 25 U. of T.L.J., 236,
271-280.

FAMILY LAW

SUGGESTIONS FOR ESSAY TOPICS

Students may propose their own topics or a variation of a topic on this list for the approval of the instructor.

1. The Organization and Jurisdiction of a "Comprehensive" Family Court.
2. Legal Representation of Children and the Concept of the "Law Guardian".
3. The Organization of "Support Services" in a Family Court.
4. Trust Concepts in Ontario and English Marital Property Law.
5. Comparison of Community Property and Separate Property.
6. Comparison of the Marital Property System in West Germany and the Recommendations for a Matrimonial Property Regime by the Ontario Law Reform Commission, Report on Family Law, Part IV, Family Property Law.
7. Comparison of the existing marital property law in Ontario and in England.
8. Occupation of the Matrimonial Home Under the Present Law and in Relation to Ontario Law Reform Commission, Report on Family Law, Part IV, Family Property Law.
9. Discussion of Ontario Law Reform Commission, Report on Family Law, Part 6, Support Obligations.
10. Comparison of Canadian and English Law on the recognition of foreign divorces.

11. Judicial Interpretation of the Best Interests of the Child.
12. Reciprocal Enforcement of Maintenance Orders.
13. Illegitimacy.
14. Improvements and Repairs by one Spouse in the Property of Another.
15. Conflict of Laws and Capacity to Marry.
16. The "Equalizing Claim" in Ontario Law Reform Commission, Report
on Family Law, Part IV, Family Property Law.
17. Conflict of Laws and Celebration of Marriage.
18. Should Restitution Play a Role in Marital Property Law?
19. Basis of Duress in Family Law.
20. Refusal of Divorce on Grounds of Hardship in Canadian and English
law.
21. (a) Reconciliation and (b) Counselling in Regard to Divorce.
22. Advancement and Resulting Trust.
23. Polygamous Marriages.
24. Change of Domicile after Acquisition of Marital Property.
25. Common Law Marriage in Modern Law.

